

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 07-19**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Statutory requirements to qualify for incentives available for the production of a movie or episodic television program in Tennessee.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department, and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

FACTS¹

¹ In addition to the facts presented in the Taxpayer's request for a Letter Ruling, additional facts were provided in a [DATE] telephone conversation between [NAME OF PERSON], the Taxpayer's CFO and

[TAXPAYER] is a Tennessee limited partnership. It is [IRREVELANT INFORMATION] headquartered in [CITY], Tennessee. [IRREVELANT INFORMATION]

The Taxpayer was formed in [YEAR] when [PERSON 1] and [PERSON 2] purchased [NAME OF BUSINESS X] from [PERSON 3's RELATIONSHIP TO PERSON 1], [PERSON 3]. [PERSON 3] started his first cable television production, [NAME OF BUSINESS Y], in [YEAR] and grew the business to approximately the size the Taxpayer is today. He sold the company in [DATE] to [NAME OF BUSINESS Z] for its [NAME OF NETWORK] and later formed [NAME OF BUSINESS A] before retiring in [YEAR]. The Taxpayer has been located in [CITY], Tennessee for a number of years and believes that being headquartered in [AREA] Tennessee gives it an advantage over its East and West coast competition.

The Taxpayer's [CITY] headquarters office is its sole location and is where all of its headquarters staff are located and employed. The Taxpayer's headquarters related functions and services are all performed at its headquarters office in [CITY], Tennessee. The [CITY] office also houses the Taxpayer's production and post facilities and [NUMBER] sets. The Taxpayer is dedicated to developing and producing filmed projects in Tennessee.

The Taxpayer will not produce any movies or episodic television programs that are "obscene," as the term is defined in Tenn. Code Ann. § 39-17-901(10).

QUESTIONS PRESENTED

1. Will the Taxpayer qualify as a "headquarters facility," pursuant to Tenn. Code Ann. § 67-6-224(b)(3) and for purposes of Tenn. Code Ann. § 67-4-2109(k)(2)?
2. Will the costs and expenses incurred by the Taxpayer in Tennessee to produce movies or episodic television programs in the State of Tennessee be deemed to be "qualified expenses," as defined in Tenn. Code Ann. § 67-4-2109(k)(1)(A)?
3. If the Taxpayer incurs at least \$1 million in "qualified expenses", will it be deemed a "qualified production company," as the term is defined in Tenn. Code Ann. § 67-4-2109(k)(1)(C)?
4. Assuming that each of the above questions are answered in the affirmative, will the Taxpayer be entitled to the refund for qualified expenses as set forth in Tenn. Code Ann. § 67-4-2109(k)(2)?
5. Tenn. Code Ann. § 67-4-2109(k)(1)(C) states that to be deemed a "qualified production company," an entity must incur at least \$1 million in "qualified expenses." Is this a one-time threshold requirement?

6. Tenn. Code Ann. § 67-4-2109(k)(1)(A) states that “qualified expenses” are those expenses incurred in Tennessee that “are necessary for the production of a movie or episodic television program in Tennessee that is in the best interests of the state.”
 - (a) What does the language “necessary for the production of a movie or episodic television program in Tennessee” mean?
 - (b) What does the language “in the best interests of this state” mean?
7. What documentation is required to evidence “qualified expenses”?

RULINGS

1. Yes.
2. Yes, provided that the costs and expenses are determined by the Commissioner of Revenue and the Commissioner of Economic and Community Development to be necessary for the production of a movie or episodic television program in Tennessee that is in the best interests of the State of Tennessee.
3. Yes.
4. Yes, provided that all applicable statutory requirements of Tenn. Code Ann. § 67-4-2109(k) are met.
5. No. The qualified production company must incur at least \$1 million in qualified expenses for the production of each movie or episodic television program produced in Tennessee that is eligible for the incentive refund.
6. (a) Expenses “necessary for the production of a movie or episodic television program in Tennessee” are expenses incurred in Tennessee without which the movie or episodic television program could not have reasonably been made. The phrase “necessary for the production of a movie or episodic television program in Tennessee” does not mean only the expenses that would be necessary to make the movie or episodic television program in Tennessee on the lowest possible budget.
 - (b) Tenn. Code Ann. § 67-4-2109(k)(1)(A), as amended by Chapter 602 of the Public Acts of 2007 (Senate Bill 2223 House Bill 2281), defines the phrase “in the best interests of this state” for purposes of movie or episodic television program incentives, to mean “. . . a determination by the commissioner of revenue and the commissioner of economic and community development that such production is a result of the credit provided in this subsection (k) and that such production is not found to be obscene as defined in § 39-17-901.”
7. Any documentation that, in the opinion of the Commissioner, is necessary to satisfy him that the expenses claimed are eligible for the statutory incentive will be required. Actual documentation required will be determined by the Commissioner on a case-

by-case basis and may vary depending on the factual situation with which the Commissioner is presented.

The minimal documentation in every case will be a listing of the expenses incurred and the name and address of each vendor to whom each expense was paid. In any case, the Commissioner will not require any more documentation regarding “qualified expenses” than is absolutely and reasonably necessary to satisfy him that the expenses claimed are eligible for the statutory incentive.

ANALYSIS

APPLICABLE STATUTES

The following definitions are set forth in Tenn. Code Ann. § 67-4-2109(k)(1) with regard to the availability of a refund for a percentage of the expenses incurred in producing a movie or episodic television program in Tennessee. Note that Tenn. Code Ann. § 67-4-2109(k)(1)(A) is set forth as amended by Chapter 602 of the Public Acts of 2007 (Senate Bill 2223 House Bill 2281).

- (A) “Qualified expenses” means those expenses incurred in Tennessee prior to July 1, 2012 that are necessary for the production of a movie or episodic television program in Tennessee; provided, however, that such expenses shall not qualify under this subdivision (k)(1)(A) unless both the commissioner of revenue and the commissioner of economic and community development determine, in their sole discretion, that the production and the allowance of the credit are in the best interests of this state. For purposes of this subdivision (k)(1)(A), “best interests of this state” means a determination by the commissioner of revenue and the commissioner of economic and community development that such production is a result of the credit provided in this subsection (k) and that such production is not found to be obscene as defined in § 39-17-901.
- (B) “Qualified investor” means any entity that has established a headquarters facility as defined in § 67-6-224 that has invested in a qualified production company; and
- (C) “Qualified production company” means any entity that incurs at least one million dollars (\$1,000,000) in qualified expenses.

The word “obscene” used in Tenn. Code Ann. § 67-4-2109(k)(1)(A) set forth above is defined in Tenn. Code Ann. § 39-17-901(10) as follows:

(10) “Obscene” means:

(A) The average person applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest;

(B) The average person applying contemporary community standards would find

that the work depicts or describes, in a patently offensive way, sexual conduct; and

(C) The work, taken as a whole, lacks serious literary, artistic, political, or scientific value[.]

The terms “community,” “patently offensive,” “prurient interest,” and “sexual conduct” used in Tenn. Code Ann. § 39-17-901(10), set forth above, are defined as follows in Tenn. Code Ann. § 39-17-901(2), (11), (12) and (14):

(2) “Community” means the judicial district, as defined in § 16-2-506, in which a violation is alleged to have occurred[.]

(11) “Patently offensive” means that which goes substantially beyond customary limits of candor in describing or representing such matters;

(12) “Prurient interest” means a shameful or morbid interest in sex;

(14) “Sexual conduct” means:

(A) Patently offensive representations of descriptions of ultimate sexual acts, normal or perverted, actual or simulated. A sexual act is simulated when it depicts explicit sexual activity that gives the appearance of ultimate sexual acts, anal, oral or genital. “Ultimate sexual acts” means sexual intercourse, anal or otherwise, fellatio, cunnilingus or sodomy; or

(B) Patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals[.]

Tenn. Code Ann. § 67-6-224(b)(3), referenced in Tenn. Code Ann. § 67-4-2109(k)(1)(B), set forth above, defines a “headquarters facility” as follows:

(3) “Headquarters facility” means a facility in this state that houses the international, national, or regional headquarters of a taxpayer, where headquarters staff employees are located and employed, and where the primary headquarters related functions and services are performed.

Tenn. Code Ann. § 67-4-2109(k) makes the following provisions for a qualified production company or a qualified investor that has established a headquarters facility in Tennessee to obtain a refund of a percentage of the expenses incurred in producing a movie or episodic television program in Tennessee:

(2) A refund in an amount equal to fifteen percent (15%) of any qualified expenses shall be allowed to any qualified production company that has established a headquarters facility as defined in § 67-6-224. If the qualified production company does not have a headquarters facility as defined in § 67-6-224, then any qualified investor shall be allowed a refund equal to the amount of refund that the qualified production company would have been entitled to had it

established a headquarters facility as defined in § 67-6-224, multiplied by the qualified investor's percentage ownership interest in the qualified production company.

- (3) In order for either a qualified production company or a qualified investor to become entitled to a refund, the qualified production company must submit documentation verifying the qualified expenses.
- (4) The commissioner shall review the documentation and notify the qualified production company of the approved amount.
- (5) Once the qualified production company has been notified of the approved amount, either the qualified production company or the qualified investment company, as appropriate, may submit a claim for refund. The refund shall be subject to the procedures of § 67-1-1802; provided, however; notwithstanding any procedure of § 67-1-1802 to the contrary, that a claim for refund shall be filed with the commissioner within three (3) years from December 31 of the year in which the qualified expenses were incurred. In no case shall a refund for the same qualified expenses be allowed twice.

APPLICATION OF THE STATUTES TO A QUALIFIED PRODUCTION COMPANY

The statutes set forth above provide that a "qualified production company" that produces a movie or episodic television program in Tennessee may qualify for a refund of 15% of the "qualified expenses" of producing the movie or episodic television program if the following requirements are met:

1. A "qualified production company" must be established in Tennessee that:
 - (a) Is a "headquarters facility" that houses the entity's international, national, or regional headquarters; and
 - (b) Is the employment location and physical location of the entity's headquarters staff employees; and
 - (c) Is where the entity's primary headquarters related functions and services are performed.
2. The entity so established must:
 - (a) Prior to July 1, 2012, incur at least \$1 million in Tennessee "qualified expenses" in the production of a movie or episodic television program; and
 - (b) Secure a written determination by the Commissioner of Revenue and the Commissioner of Economic and Community Development stating that:
 - (i) The movie or episodic television program is in the best interest of Tennessee; and

- (ii) The expenses incurred in producing the movie or episodic television program were necessary for such production in Tennessee; and
 - (iii) The movie or episodic television program is a result of the credit provided in Tenn. Code Ann. § 67-4-2109(k) and is not “obscene,” as the word is defined in Tenn. Code Ann. § 39-17-901.
3. The “qualified production company” must submit to the Commissioner of Revenue documentation of the Tennessee expenses incurred in producing the movie or episodic television program.
 4. Upon review of the documentation submitted for the expenses incurred in producing the movie or episodic television program, the Commissioner of Revenue must notify the “qualified production company” of the approved amount.
 5. Within 3 years from December 31 of the year in which the expenses are incurred, the “qualified production company” must file a refund claim with the Department of Revenue for the expenses approved.
 6. The refund claim must be processed under the provisions of Tennessee law which requires approval of the Commissioner of Revenue and the Tennessee Attorney General.
 7. A qualified production company meeting the above outlined requirements will be refunded 15% of the “qualified expenses” that it incurs in the production of a movie or episodic television program in Tennessee.

We turn now to an analysis of the Rulings made with regard to the questions presented.

1. THE TAXPAYER WILL BE CONSIDERED A “HEADQUARTERS FACILITY” UNDER THE PROVISIONS OF TENN. CODE ANN. § 67-6-224(b)(3) AND FOR PURPOSES OF TENN. CODE ANN § 67-4-2109(k)(2)

The Taxpayer will be considered a “headquarters facility” under the provisions of Tenn. Code Ann. §§ 67-6-224(b)(3) and for purposes of 67-4-2109(k)(2), if it:

1. Establishes a facility in Tennessee that houses its international, national, or regional headquarters; and
2. Its headquarters staff employees are located and employed at its Tennessee “headquarters facility”; and
3. Its primary headquarters related functions and services are performed at the facility.

The Taxpayer’s [CITY] headquarters office is its sole location and is where all of its

headquarters staff are located and employed. The Taxpayer's headquarters related functions and services are all performed at its headquarters office in [CITY], Tennessee. The [CITY] office also houses the Taxpayer's production and post facilities and [NUMBER] sets.

The facts presented clearly show that the Taxpayer's headquarters are in Tennessee and that its headquarters staff employees are located and employed at such headquarters. The Taxpayer's headquarters related functions and services are all performed at its headquarters office in [CITY], Tennessee. The Taxpayer is thus considered a "headquarters facility" under the provisions of Tenn. Code Ann. § 67-6-224(b)(3) and for purposes of Tenn. Code Ann. § 67-4-2109(k)(2).

2. COSTS AND EXPENSES INCURRED BY THE TAXPAYER IN
TENNESSEE TO PRODUCE A MOVIE OR EPISODIC TELEVISION PROGRAM
IN THE STATE OF TENNESSEE WILL BE CONSIDERED "QUALIFIED EXPENSES"
PROVIDED PROPER APPROVAL IS SECURED

Tenn. Code Ann. § 67-4-2109(k)(1)(A) defines "qualified expenses" for purposes of the incentives available for production of a movie or episodic television program in Tennessee. The statute sets forth the following criteria:

1. The expenses must be incurred in Tennessee prior to July 1, 2012 to produce a movie or episodic television program in the State of Tennessee.
2. The Commissioner of Revenue and the Commissioner of Economic and Community Development must make a written determination stating that:
 - (a) The production and allowance of the credit are in the best interests of Tennessee; and
 - (b) The expenses incurred were necessary for the production of the movie or episodic television program in Tennessee; and
 - (c) The production is a result of the credit provided by Tenn. Code Ann. § 67-4-2109(k); and
 - (d) The production is not "obscene," as the word is defined in Tenn. Code Ann. § 39-17-901.

Tenn. Code Ann. § 67-4-2109(k)(1)(C) requires the "qualified expenses" to be incurred by a "qualified production company" and requires that the expenses so incurred amount to at least \$1 million.

As explained in #3 below, the Taxpayer will be considered a "qualified production company" if it incurs "qualified expenses" of at least \$1 million in Tennessee in the production of a movie or episodic television program in the State of Tennessee. The facts presented state that the Taxpayer will not produce any movies or episodic television programs that are "obscene," as the word is defined in Tenn. Code Ann. § 39-

17-901.

The expenses incurred in Tennessee prior to July 1, 2012 for making a movie or episodic television program will be deemed “qualified expenses,” as defined in Tenn. Code Ann. § 67-4-2109(k)(1)(A); provided that the Taxpayer secures a written determination from the Commissioner of Revenue and the Commissioner of Economic and Community Development stating that:

1. The production is a result of the credit provided by Tenn. Code Ann. § 67-4-2109(k); and
 2. The production and allowance of the credit are in the best interests of Tennessee; and
 3. The expenses incurred were necessary for the production of the movie or episodic television program in Tennessee; and
 4. The production is not “obscene,” as the word is defined in Tenn. Code Ann. § 39-17-901.
3. THE TAXPAYER WILL BE CONSIDERED A “QUALIFIED PRODUCTION COMPANY” IF IT INCURS “QUALIFIED EXPENSES” IN TENNESSEE OF AT LEAST \$1 MILLION IN THE PRODUCTION OF A MOVIE OR EPISODIC TELEVISION PROGRAM IN THE STATE OF TENNESSEE

In order to be considered a “qualified production company,” Tenn. Code Ann. § 67-4-2109(k)(1)(C) requires that the entity incur “qualified expenses” in Tennessee of at least \$1 million to produce a movie or episodic television program in Tennessee.

If, prior to July 1, 2012, the Taxpayer incurs “qualified expenses” in Tennessee of at least \$1 million in the production of a movie or episodic television program in the State of Tennessee, it will be considered a “qualified production company” for purposes of being eligible for incentives available under Tenn. Code Ann. § 67-4-2109(k) for production of a movie or episodic television program in Tennessee.

4. THE TAXPAYER WILL BE ENTITLED TO A REFUND OF 15% OF ITS “QUALIFIED EXPENSES” PROVIDED THAT IT MEETS ALL APPLICABLE STATUTORY REQUIREMENTS SET FORTH IN TENN. CODE ANN. § 67-4-2109(k)

In view of the facts presented and the Rulings in response to questions 1 through 3 above, there is no reason to believe that the Taxpayer will fail to meet any of the applicable statutory requirements set forth in Tenn. Code Ann. § 67-4-2109(k) and outlined in this Letter Ruling to qualify for a 15% refund of the qualified expenses that it incurs in the production of a movie or episodic television program in Tennessee.

5. THE “QUALIFIED EXPENSES” THRESHOLD OF \$1 MILLION APPLIES TO EACH MOVIE OR EPISODIC TELEVISION PROGRAM PRODUCED

BY A “QUALIFIED PRODUCTION COMPANY” IN TENNESSEE

Tenn. Code Ann. § 67-4-2109(k)(1)(C) states that a “qualified production company” is an “. . . entity that incurs at least one million dollars (\$1,000,000) in “qualified expenses.”

Tenn. Code Ann. § 67-4-2109(k)(1)(A) states that “qualified expenses” are “. . . those expenses incurred in Tennessee prior to July 1, 2012 that are necessary for the production of a movie or episodic television program in Tennessee . . .” (Emphasis underline added.)

According to these statutes, one of the requirements that a “qualified production company” must meet to be eligible for the movie or episodic television production incentive refund provided by Tenn. Code Ann. § 67-4-2109(k)(2) is that the expenses that it incurs “for the production of a movie or episodic television program in Tennessee” must amount to at least \$1 million.

For example, suppose that expenses for the first movie or episodic television program that the Taxpayer produces in Tennessee amount to \$1 million. Assuming that all applicable statutory requirements are met, the Taxpayer will receive a refund of \$150,000 (15% of \$1,000,000).

For its second movie or episodic television program produced in Tennessee, suppose that the Taxpayer incurs expenses of \$990,000. The Taxpayer will not receive any refund because the \$1 million “qualified expenses” threshold has not been met.

Assume expenses for the third movie or episodic television program produced by the Taxpayer in Tennessee amounts to \$1,050,000 and all applicable statutory requirements are met. The Taxpayer will receive a refund of \$157,500 (15% of \$1,050,000).

6. (a) REQUIREMENT THAT “QUALIFIED EXPENSES” “ARE NECESSARY FOR THE PRODUCTION OF A MOVIE OR EPISODIC TELEVISION PROGRAM IN TENNESSEE”

Neither the word “necessary” nor any of the other words or terms used in the phrase “. . . are necessary for the production of a movie or episodic television program in Tennessee . . .” found in Tenn. Code Ann. § 67-4-2109(k)(1)(A) are defined in the law.

The most basic rule of statutory construction is to ascertain and give effect to the intention and purpose of the legislature. *Worrall v. Kroger Co.*, 545 S.W.2d 736 (Tenn. 1977). Legislative intent or purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language. [*National Gas Distributors, Inc. v. State*, 804 S.W.2d 66 \(Tenn.1991\)](#). In seeking to determine the “natural and ordinary meaning” of statutory language, the usual and accepted source for such information is a dictionary. *State v. Givens*, Slip op. 1994 WL406187 (Tenn.Crim.App. Aug. 4, 1994).

One of the definitions given for the word “necessary” in BLACK’S LAW DICTIONARY 928 (5th

ed. 1979) is “. . . something which in the accomplishment of a given object cannot be dispensed with . . .” Among the definitions given for the word “necessary” in THE AMERICAN HERITAGE DICTIONARY 834 (2nd ed. 1982) are “[a]bsolutely essential; indispensable” and “[n]eeded to achieve a certain result . . .”

In view of the context of the phrase “. . . are necessary for the production of a movie or episodic television program in Tennessee . . .” and the definitions of the word “necessary” cited in the above paragraph, it appears that the legislative intent or propose is to classify expenses without which the movie or episodic television program could not have reasonably been made as “qualified expenses.”

It does not appear that the legislature intended that only expenses that are necessary to make a movie or episodic television program in Tennessee on the lowest possible budget will be allowed as “qualified expenses.”

It appears that the legislature only intended to give the Commissioner of Revenue and the Commissioner of Economic and Community Development the ability to review expenses that a “qualified production company” claims as “qualified expenses” to make sure that such expenses are reasonably related to the production of a movie or episodic television program in Tennessee.

For example, if a “qualified production company” had someone on its payroll that had nothing to do with making the movie or episodic television program in Tennessee, or who was merely present as a bystander when the movie or episodic television program was made, but did not actually do anything at any time in connection with the movie or episodic television program, then that person’s salary will not be allowed as a “qualified expense.” If a person in the employ of the “qualified production company” worked on many projects, including the making of a movie or episodic television program in Tennessee, then only the portion of such person’s salary paid while the person was actually working on making the particular movie or episodic television program in Tennessee will be allowed as a “qualified expense.” Expenses incurred outside Tennessee will not be allowed as “qualified expenses.”

6(b) MEANING OF THE LANGUAGE “IN THE BEST INTERESTS OF THIS STATE”
IN TENN. CODE ANN. § 67-4-2109(k)(1)(A)

Tenn. Code Ann. § 67-4-2109(k)(1)(A) states that “qualified expenses” are limited to those expenses incurred in Tennessee that, in the sole discretion of the Commissioner of Revenue and the Commissioner of Economic and Community Development, are necessary for the production of a movie or episodic television program in Tennessee and the production and allowance of the credit are “in the best interests of this state.”

By enactment of Tenn. Code Ann. § 67-4-2109(k), the Tennessee legislature obviously wants to encourage the making of movies or episodic television programs in Tennessee. The legislature has provided an incentive to entities that choose to make movies or episodic television programs in Tennessee and that meet the statutory requirements to qualify for the incentive offered. However, the legislature does not want to encourage or reward the making of movies or episodic television programs in

Tennessee that are not “in the best interests of this state.”

The last sentence of Tenn. Code Ann. § 67-4-2109(k)(1)(A), set forth below, defines “in the best interests of this state” as follows:

For purposes of this subdivision (k)(1)(A), “best interests of this state” means a determination by the commissioner of revenue and the commissioner of economic and community development that such production is a result of the credit provided in this subsection (k) and that such production is not found to be obscene as defined in § 39-17-901.

A movie or episodic television program that, in the opinion of the Commissioner of Revenue and the Commissioner of Economic and Community Development, is not a result of the credit provided in Tenn. Code Ann. § 67-4-2109(k) or that is “obscene,” as the word is defined Tenn. Code Ann. § 39-17-109, is not “in the best interests of this state” and its producer will not be rewarded by the incentives provided in Tenn. Code Ann. § 67-4-2109(k) for making the movie or episodic television program in Tennessee.

According to the facts presented, the Taxpayer intends to produce movies or episodic television programs as a result of the credit provided in Tenn. Code Ann. § 67-4-2109(k) and none of its productions will be “obscene,” as the word is defined Tenn. Code Ann. § 39-17-109. Therefore, it does not appear that the Taxpayer will have any problem in meeting the “best interests of this state” requirement.

7. DOCUMENTATION REQUIRED TO EVIDENCE “QUALIFIED EXPENSES”

Tenn. Code Ann. § 67-4-2109(k)(3) and (4) make the following provisions concerning the documentation of “qualified expenses” that are eligible for the statutory incentive for the making of a movie or episodic television program in Tennessee:

(3) In order for either a qualified production company or a qualified investor to become entitled to a refund, the qualified production company must submit documentation verifying the qualified expenses.

(4) The commissioner shall review the documentation and notify the qualified production company of the approved amount.

The statutes are so written that the Commissioner of Revenue may require any documentation that, in the opinion of the Commissioner, is necessary to satisfy him that the expenses are eligible for the statutory incentive. The actual documentation required will be determined by the Commissioner on a case-by-case basis and may vary depending on the factual situation with which the Commissioner is presented.

The minimal documentation in every case will be a listing of the expenses incurred and the name and address of each vendor to whom each expense was paid. If the nature of the expense and its relationship to the movie or episodic television program produced is not obvious from such a listing, then a further explanation may need to be provided.

In some situations, the Commissioner may find it necessary to require a copy of the invoice evidencing each expense and/or a copy of the canceled check or other evidence of payment. Affidavits attesting to certain expenses, or certain work done in production of the movie or episodic television program in Tennessee could also be required in certain instances.

In any case, the Commissioner will not require any more documentation regarding "qualified expenses" than is absolutely and reasonably necessary to satisfy him that the expenses claimed are eligible for the statutory incentive.

Arnold B. Clapp
Special Counsel to the Commissioner

APPROVED: Reagan Farr, Commissioner

DATE: 7/23/07